

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Bondy et al.	Confirmation No.:	4926
Serial No.:	10/583,814	Art Unit:	1625
§ 371 Date:	June 4, 2007	Examiner:	Niloofar Rahmani
Patent No.:	7,648,998	Issue Date:	January 19, 2010
Customer No.:	21559		
Title:	IMIDAZO 4,5-C PYRIDINE COMPOUNDS AND METHODS OF ANTIVIRAL TREATMENT		

RENEWED APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705

In response to the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) transmitted on December 31, 2009 and the Request for Recalculation of Patent Term Adjustment in view of Wyeth filed on February 19, 2010 in connection with the above-captioned patent, Applicants hereby request reconsideration of the patent term adjustment. The above identified application matured into U.S. Patent 7,648,998 on January 19, 2010. This request for reconsideration of patent term adjustment is timely filed within two months of the issue date of the patent as required by 37 CFR § 1.705(d). Applicants submit that the correct total Patent Office delay is 402 days, and therefore the total patent term adjustment should be 371 days (i.e., total Patent Office delay of 402 days minus total applicant delay of 31 days). Applicants discuss the basis for this request below.

Applicants request that, in determining the period eligible for adjustment for the instant patent under 35 U.S.C. 154(b)(1)(B), the Office calculate the period of adjustment based on the date this application commenced the U.S. National Stage under 35 U.S.C. § 371(b).

35 U.S.C. § 154(b)(1)(B) states:

Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years after the actual filing date of the application in the United States, not including-

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the term of the patent shall be extended 1 day for each day after the end of that 3-year period until the patent is issued.

Corresponding provisions are found in 37 C.F.R. §§ 1.702(b) and 1.703(b). As stated in 37 C.F.R. § 1.702(b), and as clarified in the Notice published in the Official Gazette, Volume 1347, on October 6, 2009, the three year period runs from the date on which the National Stage commenced under 35 U.S.C. § 371(b).

The present application commenced the National Stage under 35 U.S.C. § 371(b) on June 22, 2006, and the period for Patent Office 35 U.S.C. § 154(b)(1)(B) delay began on June 23, 2009 and ran until January 19, 2010. The total Patent Office 35 U.S.C. § 154(b)(1)(B) delay is thus 211 days.

The Patent Office previously accounted for a delay of 191 days under 35 U.S.C. § 154(b)(1)(A) for mailing a Non-Final Rejection on February 11, 2009, none of which overlaps with the period between June 23, 2009 and January 19, 2010.

Applicants submit that the Patent Office A delay under 35 U.S.C. § 154(b)(1)(A) was correctly calculated as 191 days.

Based on the decision of the Court in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir., Jan. 7, 2010), the total time eligible for patent term adjustment due to Patent Office delay under 35 U.S.C. § 154(b)(2)(A) is the sum of the number of days of Patent Office delay under 35 U.S.C. § 154(b)(1)(A) and 35 U.S.C. § 154(b)(1)(B), which do not overlap on calendar days. This was acknowledged as policy by the Patent Office in a notice in the Federal Register, Vol. 75, February 1, 2010, p 5043. Therefore, the days eligible for patent term adjustment due to Patent Office delay are 191 days for delay under 35 U.S.C. § 154(b)(1)(A) and 211 days for delay under 35 U.S.C. § 154(b)(1)(B) for a total of 402 days.

The instant patent is not subject to terminal disclaimer.

Based on an analysis of 37 C.F.R. § 1.704, Applicants agree with the Office's calculation that the total applicant delay is 31 days.

Applicants submit that the correct total patent term adjustment should be 371 days (402 days of total Patent Office delay - 31 days of total Applicant delay = 371 days), and such correction is also hereby respectfully requested.

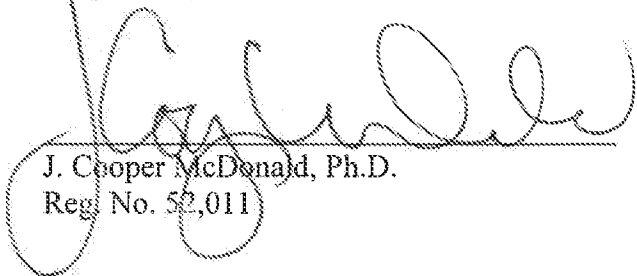
CONCLUSION

For the above reasons, Applicants submit that the current patent term adjustment should be 371 days and request reconsideration of the patent term adjustment. The fee set forth in 37 C.F.R. § 1.18(e) is transmitted herewith. If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: \_\_\_\_\_

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